

REMARKS

I. Restriction

Citing 35 U.S.C. § 121, the examiner asserted that claims 1-10 were drawn to two distinct inventions:

Group I: Claims 1-7 and 9-10, drawn to a method of treating ischemia and reperfusion injury; and

Group II: Claim 8, drawn to a kit containing components for treating myocardial infarction.

II. Election

The applicants hereby elect Group I, which includes claims 1-7 and 9-10, drawn to a method of treating ischemia and reperfusion injury, with traverse.

III. Argument

The examiner has restricted the pending claims into two groups. The examiner asserted that the applicants are claiming two distinct inventions. In response, the applicants respectfully traverse.

The applicants request that the restriction requirement be reconsidered because the examiner has not shown that a serious burden would be required to examine the claims of Groups I and II. M.P.E.P. § 803 provides:

If the search and examination of an application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Thus, for a restriction to be proper, the examiner must satisfy the following two criteria: (1) that independent and distinct inventions are being claimed (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden. *See* M.P.E.P. § 803.

The applicants submit that the examiner has not established that a serious burden would be imposed on the Patent Office if all ten claims under consideration were searched and examined together. While the applicants agree that the methods of treating ischemia and

reperfusion injury in Group I and the kit containing components for treating myocardial infarction in Group II have separate utility, any search designed to identify documents relevant to the patentability of the claimed methods of Group I will employ the same or similar search terms and techniques to identify documents relevant to the patentability of the claimed kit of Group II. The applicants therefore request that the restriction requirement with respect to the claims of Groups I and II be withdrawn and the claims of these groups be examined simultaneously.

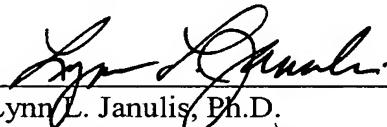
CONCLUSION

In light of the above comments and in view of the subject matter of the claims under consideration, the applicants respectfully request reconsideration and withdrawal of the restriction requirement. Should the examiner have any questions or comments regarding this response or the application, the examiner is invited to contact the undersigned at the number indicated.

Respectfully submitted,

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